IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3710 OF 1996

The Nasic Peoples' Co-operative
Bank Limited, 480/5, Gole Colony
Nasik - 2 ... Petitioner

V/s.

1. Smt.Mrinalini S.Ujagare
near Rachana Vidyalaya, Sharanpur
Road, Nasik - 2

2. Shri S.A. Deshpande
Presiding Officer
Labour Court, Nasik
having its office at Plastic House
Harichand Colony, Nasik

3. Shri P.B. Akolkar,
Member, Industrial Court
Nasik, having his office at Plastic
House, Harichand Colony, Nasik ... Respondents

Mr.P.K. Rele i/b S.S. Pakale for Petitioner
Mr.S.M. Dharap with M.S. Karnik for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 20, 2004**

ORAL JUDGMENT:

. This Petition is directed against the order of the Labour Court granting reinstatement to the respondent-workman and the order of the Industrial Court in Revision allowing the revision application filed by the respondent granting full backwages while confirming the order of the Labour Court.

2. The facts giving rise to the present petition

are as follows:

The Petitioner appointed the Respondent-workman in service in 1977. She was employed as a clerk and continued in service till 20.6.1984 when her services were terminated by way of dismissal. It appears that the respondent-workman had remained absent from 15.3.1983 onwards. According to her, she was ill and therefore, could not attend work. A showcause notice was issued to her on 12.5.1983. She replied to the same and on 22.8.1983 she was directed to join duty. In the meantime, it appears that on 5.7.1983, she reported for duty with her fitness certificate. However, it is the case of the respondent-workman that she was not allowed to resume duty and was instead told to reply to the showcause notice issued to her. The reply to the showcause notice shows that the respondent-workman was unwell for a long period of time due to which she was away from work. The Petitioner issued a chargesheet in respect of her absence from 15.3.1983 to 30.6.1983 which was unauthorised. A second chargesheet was issued for the same charge of unauthorised absence for the period from 1.7.1983 to 21.1.1984. The enquiry officer found the Respondent-workman guilty of the misconducts alleged in both the chargesheets. After the representation of the respondent-workman made on the findings of the enquiry officer, the Board of Directors of the

Petitioner resolved to dismiss the respondent workman from service on account of the charges proved in the 2nd chargesheet. Accordingly, on 20.6.1984 the order of dismissal was passed against the respondent-workman for unauthorised absence from 1.7.1983 to 21.1.1984. An appeal preferred against the dismissal was also rejected. Consequently, the respondent-workman filed a complaint under Item 1(b), (d), (e) and (f) of Schedule IV of the MRTU & PULP Act before the Labour Court. The Petitioner raised the contention that there was a delay in filing of the complaint and it was barred by limitation. On merits, the Petitioner contended that the respondent- workman remained absent from duty without any explanation whatsoever, thereby causing hurdles in the smooth functioning of the working of the bank. Evidence was led before the Labour Court by both the parties. The Labour Court on 31.7.1991 directed that the Petitioner should reinstate the respondent-workman with continuity of service but without backwages. Aggrieved by this order, both the petitioner and the respondent-workman preferred revision applications before the Industrial Court. The Industrial Court granted stay of the order of the Labour Court. The revisions were finally heard in 1996 and the Industrial Court held that the respondent-workman was entitled to backwages since the misconduct proved against the Petitioner of remaining absent

unauthorisedly was not so serious as to warrant the punishment of dismissal. Aggrieved by both these orders, the Petitioner bank approached this Court under Article 226 of the Constitution of India.

3. When the Petition was admitted in 1996, the Petitioner was directed to reinstate the workman without prejudice to their contentions in this writ petition. However, the order directing the payment of backwages was stayed. Accordingly, the respondent-workman has been reinstated. An amount of Rs.84,825/- was deposited in this Court and invested with the Petitioner bank upto 18.10.2002. This amount with the accrued interest is now Rs.1,32,197/-. Furthermore, the respondent is to retire within a period of three or four months from today. There is no blemish in the service record of the workman for the entire period that she has worked after being reinstated as per the directions of this Court.

4. Mr.Rele, learned Counsel for the Petitioner-bank, submits that the Labour Court ought not to have granted reinstatement since the misconduct has been proved against the respondent-workman. He submits that she has given no explanation whatsoever for remaining absent from duty from 1.7.1983 to 21.1.1984. According to the learned Counsel, when the Labour Court has found that this charge of remaining absent had been

proved there was every reason to uphold the order of dismissal passed by the employer. He further submits that the order of reinstatement could have been passed only if there was no serious misconduct. In the present case, he submits, the fact that the respondent had remained absent from duty unjustifiably for almost seven months should have persuaded the Labour Court to confirm the order of dismissal. With respect to the order of the Industrial Court, the learned Counsel submits that the Court has shown no application of mind at all to the Labour Court's order while concluding that the order of the Labour Court is well reasoned. According to the learned Counsel, the Industrial Court had no jurisdiction to direct that the period of absence for seven months should be considered as leave without pay as provided in the service regulations thereby reducing the gravity of the misconduct committed by the workman. According to him, the Industrial Court has erred in concluding that the Petitioner was liable to pay backwages for the entire period.

5. Mr.Dharap, learned Counsel for Respondent No.1, submits that the Labour Court having come to the conclusion that the order of dismissal was too harsh and disproportionate had rightly held that the respondent was entitled to reinstatement. According to the learned Counsel, the respondent was unwell for a long period of

time. She reported for duty on 5.7.1983 on which day she was not allowed to resume duty. He submits that the first showcause notice issued to the respondent was an indication that the Petitioner wanted to get rid of the services of the workman and it had decided to terminate her services if she did not report for work immediately. He submits that this intention of the Petitioner, of dismissing the respondent-workman from the services, is evident from the fact that when she reported for work pursuant to the showcause notice and other letters received by her from the Petitioner-bank, she was not permitted to resume duty. In these circumstances, he submits that the Labour Court ought not to have considered the factors which led to the petitioner passing the order of the dismissal. According to the learned Counsel, the Labour Court ought to have held that although the misconduct was proved, the circumstances did not warrant that she be dismissed from service and, therefore, ought to have granted reinstatement with continuity of service and full backwages. He submits that the order of the Industrial Court has taken into consideration all these factors and has rightly concluded that the absence of the respondent-workmen could be set off against the leave to her credit.

6. I have given my anxious consideration to the

submissions of both the learned Counsel. There is no doubt that the absence for seven months without any explanation is a misconduct. This finding of the Labour Court has not been challenged by the respondent-workman. Nor has this finding been set aside by the Industrial Court. Admittedly, the absence of the respondent from 5.7.1983 to 21.1.1984 assumes importance since the only explanation given by the workman is that she was advised to remain absent from duty. There is no evidence on record to establish that she had indeed been given such advice nor is there any material to show as to why the absence for this period of seven months was not explained by her. The submission of Mr.Dharap that it was the intention of the Petitioner to terminate the services of the respondent cannot be accepted as admittedly she was absent from 5.7.1983 to 21.1.1984. Therefore, the findings of the Labour Court regarding absence for this period must be confirmed. However, the Labour Court has denied the backwages for the entire period of seven years. This to my mind is too harsh a punishment for unauthorised absence. There is no doubt that the respondent-workman had been absent earlier on account of some medical problems. Therefore, in the facts and circumstances of the case, the Labour Court was, in my view, incorrect in granting only reinstatement with continuity of service.

7. However, the order of the Industrial Court directing that the unauthorised leave be set off against the leave available to the credit of the respondent-workman also cannot be countenanced. The Industrial Court has merely reproduced the submissions made by the advocates for the parties. The Industrial Court while doing so has not discussed the findings of the Labour Court and has not given reasons for concluding that the judgment of the Labour Court was well reasoned and that charge Nos.1, 2 and 4 were not proved. Besides reproducing the submissions, the Industrial Court has not really dealt with the judgment of the Labour Court by assessing whether the Labour Court had arrived at a proper conclusion.

8. However, I have no doubt that the punishment of dismissal is shockingly disproportionate and therefore, the order of the Labour Court to that extent must be confirmed. But to deprive the respondent-workman of full backwages for the entire period is too harsh a punishment. As a result, the workman has been deprived of wages for over seven years.

9. As stated above, the Petitioner has already deposited an amount of Rs.84,825/-. I am of the view that the ends of justice will be met if this amount as deposited by the Petitioner together with accrued

interest is paid over to the respondent workmen.

10. Writ Petition is disposed of accordingly.

11. Certified copy expedited.

12. Parties be provided an authenticated copy of this order.